IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2883 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MANAGER SHREE SOMNATH TRUST

Versus

NILKANTH BHAILAL DAVE

Appearance:

1. Special Civil Application No. 2883 of 2001

MR RJ OZA for Petitioner No. 1

MR SHAUKAT A SHAIKH for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 23/09/2004

ORAL JUDGEMENT

In this petition, the petitioner has challenged the legality of the award dated 30th August 2000 passed by the Presiding Officer, Labour Court, Junagadh by which

the reference of the respondent-workman was allowed in part and the action of the petitioner-employer of terminating the services of the respondent was set aside and the respondent was directed to be reinstated in service with 50 per cent backwages.

2. It is not in dispute that while the respondent was working as Accounts Clerk with the petitioner, a criminal complaint dated 22nd June 1985 came to be filed before the Prabhas Patan Police Station alleging offences punishable under sections 463, 464, 468, 471, 474, 477-A, 403, 406, 408 and 420 of the Indian Penal Code. On account of the said criminal complaint, the petitioner placed the respondent under suspension by the order dated 24.6.85.

3. It is also not in dispute that in the criminal case, the respondent was acquitted by the Trial Court by the judgment dated 19th April 1995. It is also not in dispute that even after the said judgment delivered by the criminal court, the petitioner did not revoke the suspension order of the respondent nor any departmental inquiry independent of the outcome of the criminal case was conducted by the petitioner. The respondent upon his acquittal in the criminal case approached the Labour Court, Junagadh by filing Reference (LCJ) No.16/97 complaining against action of the petitioner of having terminated the services of the respondent.

4. Before the Labour Court, the petitioner had contended that the services of the respondent were never terminated and that this is a case of abandonment of service since the respondent himself had not reported for duty and that therefore, there is no action of the petitioner which can be examined by the Labour Court. The Labour Court, however, did not accept the defence of the petitioner and after examining the contention raised by the parties, was pleased to come to the conclusion that the respondent was acquitted by the criminal court and no departmental inquiry was conducted by the petitioner-employer and that therefore, the action of the petitioner was illegal. The Labour Court also found that the termination of the respondent by the petitioner was an act of imposing extreme penalty. The Labour Court, therefore, was pleased to set aside the action of the petitioner of terminating the services of the respondent-workman and directed that he be reinstated in service with continuity of service and with 50 per cent backwages.

5. Having heard the learned advocates appearing for

the parties and having considered the material on record, I am broadly in agreement with the view of the Labour Court. I accept the submission of the learned advocate for the petitioner that the Labour Court wrongly observed that the charges pursuant to the chargesheet were not proved against the respondent since no chargesheet was issued by the petitioner. However, it is not in dispute that the respondent was placed under suspension on account of the criminal case filed against him. It is also not in dispute that even after his acquittal by the criminal court, the petitioner never revoked the suspension order. Admittedly, no departmental inquiry was conducted irrespective of the outcome of the criminal case nor is it disputed that no evidence was led before the Labour Court in support of the charge of misconduct against the respondent. In that view of the matter, the Labour Court was justified in directing reinstatement of the respondent workman. Since the petitioner itself had placed the respondent under suspension, the theory of abandonment of service also cannot be accepted. I am therefore inclined to uphold the award of the Labour Court with respect to direction for reinstatement of the respondent in service. Considering, however, the long passage of time and other attendant circumstances, including the concession of the learned advocate for the respondent, I direct that the respondent will be entitled to 20 per cent of backwages for the intervening period. Considering the nature of allegations made against the respondent, it is further provided that his reinstatement need not be on the original post as long as his pay is protected and the respondent will agree to work on any other position which do not involve duties of sensitive nature and it will be open for the petitioner to so employ him.

6. In the result, the petition is disposed of with the above modifications in the award of the Labour Court. Rule is made absolute to the above extent with no order as to costs. R & P received from the Labour Court be sent back.

Direct service is permitted to respondent.

(Akil Kureshi, J.)
(vjn)